94

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Denise Dehning,

Petitioner,

v.

Child Development Services
of Fremont County, et al.,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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Filed
U.S. District Court
District of Wyoming
DEC 11 2006
Stephan Harris, Clerk
Cheyenne

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

DENISE J. DEHNING,

Plaintiff,

vs. Case No. 05CV249B

CHILD DEVELOPMENT SERVICES OF FREMONT COUNTY, et al.,

Defendants.

ORDER ENFORCING SETTLEMENT

THIS MATTER came before the Court on the 1st day of December, 2006 on Defendants' Motion to Enforce Settlement. Denise Dehning, Plaintiff, appeared with her attorney, Donna S. Courtney. Sky D Phifer, attorney, appeared on behalf of the Defendants. After testimony and hearing arguments of counsel the Honorable Clarence A. Brimmer, United States District Judge found as follows:

1. On April 3, 2006 the parties entered into settlement negotiations at the office of Joseph E. Vlastos in Casper, WY, with Mr. Vlastos mediating the settlement negotiations. At the end of the day the parties reached an agreement, which agreement was recited before all parties, and assented to by all parties, including the Plaintiff. This agreement was set out in full by Mr. Vlastos on April 4, 2006 by letter and submitted to the parties. The agreement letter of Mr. Vlastos was entered into evidence as Defendants' Exhibit 1. The agreement contemplated the drafting of a release by Plaintiff's counsel and an independent contractor agreement by Defendants' counsel. The settlement agreement as set out in Defendants' Exhibit 1 is binding and should be enforced except as set out below.
2. Counsel for Plaintiff admitted that an agreement was entered into. Plaintiff further admitted in her testimony that an agreement was entered into. Plaintiff further admitted in her testimony that an agreement was entered into, and specifically admitted the material terms of the agreement. No fraud was alleged or proven by Plaintiff to constitute a defense to the agreement under the statute of frauds, especially in light of the Plaintiff's admission, under oath, before this Court that an agreement had been entered into. See Brockman v. Sweetwater County School

District #1, 826 F.Supp. 1328 (U.S.D.C., Dist. of Wyo. 1993), on appeal, 25 F.3d 1055 (10th Cir. 1994)

3. Plaintiff refused to sign the release. Plaintiff testified that she had not understood that the settlement concerned her sex [sic] harassment claim as well as her retaliation claim, despite the fact that the Confidential Mediation Statement prepared by Plaintiff's counsel and reviewed by Plaintiff prior to its submission to Mr. Vlastos explicitly stated "This is a sexual harassment and retaliation case" (see Defendants' Ex. 9).
4. Plaintiff also refused to sign the independent contractor agreement as she objected to certain language within the agreement. Plaintiff then refused to meet with her attorney to finalize the language.
5. Plaintiff had no reasonable grounds to not sign the paperwork reflecting portions of the settlement. Plaintiff is a well educated woman with a Master's degree and her contention that she did not understand that both the sexual harassment and retaliation issues were settled is unrealistic.
6. Plaintiff's attorney, Mr. Don Rissler and the mediator, Mr. Joseph Vlastos, performed very well, both competently and professionally, in their respective roles.
7. Plaintiff's refusal to finalize the independent contractor agreement which was to start in August of 2006 constituted a waiver of her right to such agreement, especially considering the fact that Defendant Child

Development Services of Fremont County had to hire another physical therapist to perform the duties Plaintiff was to perform.

8. Plaintiff's refusal to abide by the terms of the settlement agreement was arbitrary, willful, and without cause and Plaintiff should be assessed Defendants' attorney's fees and costs in the amount of $7,376.72 in prosecuting their Motion to Enforce Settlement. Plaintiff should also be assessed the additional fees of the mediator, Mr. Vlastos, consisting of 3 hours at $175.00, 6 hours at $90.00 for travel time, and $144.00 for mileage ($.40 per mile x 360 miles) for a total of $1209.00.
9. Mr. Don Rissler is entitled to his fees pursuant to his contingency fee agreement in the amount of $12,000.00 consisting of 40% of the recovery in this matter.
10. Defendants' attorney's fees and costs, Mr. Vlastos' fees and costs, and Mr. Rissler's fees should be withheld from the $30,000.00 to be paid to Plaintiff as part of the settlement.

IT IS THEREFOR ORDERED:

1. That the settlement agreement entered between the parties on April 3, 2006 as set out in Defendants' Exhibit 1 is ratified by this Court, except as to those provisions set out below.
2. Plaintiff is found to have waived the Independent Contractor Agreement thereby deleting paragraph (2) from the settlement.

3. Defendants shall pay to Plaintiff the sum of $30,000.00 less Defendants' attorney's fees and costs in the amount of $7,376.72, Mr. Vlastos' fees and costs in the amount of $1,209.00, and Mr. Rissler's fees in the amount of $12,000.00.

4. All claims by Plaintiff against Defendants, both known and unknown, to date are hereby released, including all claims for sexual harassment as well as retaliation.

IT IS FURTHER ORDERED that this matter is hereby dismissed with prejudice with Plaintiff paying her own costs and attorney's fees, as well as Defendant's attorney's fees and costs in prosecuting their Motion to Enforce Settlement.

DATED this 11th day of December, 2006

/s/ Clarence A. Brimmer
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

/s/ Donna S. Courtney
Donna S. Courtney
attorney for Plaintiff

/s/ Sky D Phifer
Sky D Phifer
attorney for Defendants